

entered into between

WATERBERG DISTRICT MUNICIPALITY



Waterberg
District Municipality

on the Go for Growth

and

Rakhutsetsa Security Services
(Registration No: 2004/021540/23)

for the provision of Security Services-WDM/2021/22-03

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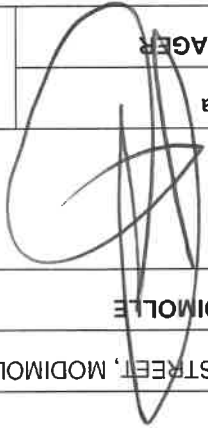
IN TERMS OF WHICH THE PARTIES AGREE TO THE TERMS AND CONDITIONS AND SCHEDULES ATTACHED

Registration number		2004/0241540/23	
Physical Address		9238 Ext 10, Modimolle 0510	
Signed at		MODIMOLLE	
		Date	31 st July 2023
P. C. Masekane			
Name		Emmanuel Rakhutseta Maremane	
Designation		DIRECTOR	
		who warrants that they are duly authorised to sign	

(the "Service Provider")

RAKHUTSETSA SECURITY SERVICES

And

Physical Address		HARRY GWALA STREET, MODIMOLLE, 0510	
Signed at		MODIMOLLE	
		Date	31 st July 2023
			
Name		P. Raputsoa	
Designation		MUNICIPAL MANAGER	
		who warrants that they are duly authorised to sign	

(the "Municipality")

WATERBERG DISTRICT MUNICIPALITY

AGREEMENT STRUCTURE

PART A: Agreement for the Provision of Security Services-WDM/2021/22-03

PART B: Schedules

- 1) Payment Mechanism**
- 2) Output Specifications**
- 3) Variation Procedure**

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WHEREAS:

- (A) This Agreement shall regulate the relationship between the Municipality and the Service Provider pertaining to the provision of the security services in insuring that the employees and the property of the Municipality are safe and secured at all times.
- (B) The Project objectives have been aligned to the strategic objectives of the Municipality and the Output Specifications took into consideration the vision of the Municipality as expressed in Mayoral Committee Resolutions.
- (C) Accordingly, the Municipality has advertised a tender, number WDM/2021/22-03 inviting proposals from the private sector or Security Companies to undertake and provide the Security Services to the Municipality.
- (D) Pursuant to a competitive tender process, the Service Provider was selected based on its responsiveness to the requirements of the bid, consequently the Municipality would request the Service Provider, and the Service Provider is required to agree, to the provision of the Services on terms and conditions set out in this Agreement.
- IT would therefore be AGREED as follows:

23/1/5

PART A – PROVISION OF SECURITY SERVICES

1 DEFINITIONS

In this Agreement the following expressions and words have the meanings assigned to them below and derivative expressions and words will have the corresponding meaning:

- 1.1 "PSIRA" means Private Security Regulator
- 1.2 "AFSA" means the Arbitration Foundation of Southern Africa and its successors in title, provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Pretoria Bar Council;
- 1.3 "Agreement" means this document, Terms of Reference issued by the Municipality, the proposal submitted by the service provider and the appointment letter, comprising: -

- 1.3.1 this Service Agreement;
- 1.3.2 the Service Provider's proposal;
- 1.3.3 Letter of appointment;
- 1.3.4 Acceptance letter
- 1.3.5 Tender Document duly completed and signed by the Service provider
- 1.3.6 the annexures and schedules to this Agreement; and
- 1.3.7 together with amendments thereto, executed by the parties in accordance with Variation Procedure;

- 1.4 "Attachment" means any document that form of this agreement including the tender document and schedules referred to in this agreement.

- 1.5 "Business Day" means any day in the RSA which is not a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994. All references in this Agreement to days shall be deemed to be to calendar days, unless specifically stipulated as being Business Days;

- 1.6 "Business Hours" shall mean the hours from 07h00 to 18h00 on Business Days;
- 1.7 "Control Room or Guard Room" shall mean the facility established and operated by the Service Provider for the purposes of receiving and capturing service calls from the Municipality with respect to the Services;

2.3.1.5

1.8 "the Municipality" means the Waterberg District Municipality

1.9 "the Security Officer" means legal person who will observe and report activities and incidents at assigned client site, providing for security and safety of client property and personnel. Make periodic patrol to check for irregular and inspect protection devices and fire control equipment.

1.10 "site" means all listed five(5) WDM premises including the surrounding areas :

(i). WDM Head Office

(ii). Modimolle Disaster Centre

(iii). Lephalale Disaster Centre

(iv). Modimolle Abattoir

(v). Bela-bela Fire Station

1.11 "Project Manager" means the person duly appointed to manage the project between the Service Provider and the Municipality;

1.12 "Contract Year" means a successive 36 (Thirty six) months period measured from the Service Commencement Date of this Agreement and each anniversary thereafter;

1.13 "Corrupt Act" means:

1.13.1 offering, giving or agreeing to give to the Municipality or any other local, provincial or national government or authority ("Public Body"), or to any person employed by or on behalf of the Municipality any gift or consideration of any kind as an inducement or reward:

1.13.1.1 for doing or not doing (or for having done or not having

done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Municipality or any act in relation to the obtaining or performance of this Agreement or any other contract with the Municipality or any other Public Body; or

1.13.1.2 for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Municipality or any other Public Body;

1.13.1.3 entering into this Agreement or any other contract with the Municipality or any other Public Body in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf,

or to its knowledge, unless before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Municipality;

1.13.2 committing any offence:

1.13.2.1 under any law from time to time dealing with bribery, corruption or extortion;

1.13.2.2 under any law creating offences in respect of fraudulent acts; or

1.13.2.3 at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Municipality or any other Public Body; or

1.13.2.4 defrauding or attempting to defraud or conspiring to defraud the Municipality or any other Public Body;

1.14 "CPI" means the weighted average of the consumer price index as published from time to time by Statistics South Africa, which is referred to as "CPI – Metropolitan areas – all items" in Statistical release PO141; in the event that:

1.14.1 such index ceases to be published; or

1.14.2 the Municipality and the Service Provider agree that due to a change in circumstances such index is no longer representative,

1.14.3 then from the date when the index was last published, the parties shall use such other index as agreed between them or, failing agreement, as determined by an Independent Expert, who shall be a firm of auditors;

1.15 "Default" means the failure by a party to comply with its obligation in terms of this Agreement or any negligent or willful act or omission of the party in question or its personnel;

1.16 "Effective Date" means the date in which the Service Provider has occupied all sites in terms of this agreement.

1.17 "Service Provider's Project Manager" means a Service Provider's representative appointed to manage this project being Director of the Company or his or her duly authorised person.

1.18 "Good Industry Practice" means in relation to the manner in which the Services are rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

1.19 "Independent Expert" means an independent expert appointed by agreement between the parties and which shall exclude competitors to the Service Provider, to, as the case may be, undertake a function as recorded in this Agreement or resolve a dispute between them where required in terms of this Agreement, provided that:-

1.19.1.1 if the parties are unable to agree on an independent expert within 5 (five) days of either party requiring one to be appointed, either party may thereafter require that same shall be appointed by AFSA;

1.19.1.2 such expert shall be deemed to act as an expert and not as an arbitrator; 1.19.1.3 the decision of such Independent Expert shall (in the absence of clerical or manifest error) be final and binding on the parties;

1.19.1.4 the Independent Expert's fees for so acting shall be borne by the parties in equal shares unless the Independent Expert determines that the conduct of either party was such that it should bear a greater proportion or all of such fees; and

1.19.1.5 where AFSA is required in terms of this Agreement to appoint an independent third party, it is the parties' intention that such third party shall have the requisite skills, experience and expertise necessary to determine the specific issue at hand, provided further that AFSA's appointee shall not be subject to dispute by either party on the grounds that it has failed to act in accordance with the intention expressed in this clause;

1.20 "Initial Purchase Order" means the first order of the Provision of Security Services Project placed by the Municipality at Effective Date, or as soon as is reasonably practicable after the Effective Date, in accordance with the Provision of Security Services tender specifications, pricing and quantities set out in the agreement;

1.21 **"Intellectual Property Rights"** means patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, know-how, logos, trade or business names and other similar rights or obligations of whatsoever nature, whether capable of registration or not, but including any right to register same;

1.22 **"Penalty Interest"** means interest at the Prime Interest Rate plus 2%, on any overdue amount, calculated from the due date of payment of such amount to the date of actual payment thereof (both days inclusive), calculated on a daily basis and compounded monthly in arrear;

1.23 **"Pricing Principles"** means the principles applicable to the costing of the Services provided by the Service Provider pursuant to this Agreement, as recorded in schedule 1 (Payment Mechanism);

1.24 **"Prime Interest Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Nedbank Group Limited, as certified by any manager of such bank, calculated daily and compounded monthly in arrears;

1.25 **"Service Provider"** means Rakhutsetsa Security Services with registration number:2004/021540/23

1.26 **"Responsible Authority"** means any ministry, minister, organ of state, official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;

1.27 **"RSA"** means the Republic of South Africa;

1.28 **"Services"** means the services to be provided by the Service Provider to the Municipality specified in this Agreement and the SLA with respect to the provision of Physical Security Services.

1.29 **"Service Commencement Date"** means the date of Service Commencement as stated in the agreement, and which shall referred to the 1st September 2023, day in which the Service Provider occupied the sites.

1.30 **"Service Levels"** means the stipulated criteria applicable to the Services, as set out in the SLA;

1.31 **"Project Managers"** means collectively, the respective officials designated by the parties for the purposes of managing ongoing operational aspects of the Agreement;

1.32 **"Service Period"** means the period from the Service Commencement Date to the Termination Date and which, unless otherwise agreed between the Parties, shall not be less than or exceed the period of 36 (thirty six) months from the Service Commencement Date;

1.33 **"Signature Date"** means the date of signature of this Agreement by both parties but if signed on different dates, the last of such dates;

1.34 **"SLA"** means the service level agreement defining the Services, Service Levels, reciprocal obligations of the parties in respect thereof and penalties payable in respect of any failure to achieve such Service Levels, as set out schedule 2 (Output Specifications) hereto;

1.35 **"Staff"** means, in respect of a party, any officer, employee, agent, consultant or sub-contractor of such party;

1.36 **Commencement Date** "means" the 1st September 2023
1.37 **End Date/ Expiry Date** "Means" the 30th August 2026

1.38 **"Termination Date"** means either of the following:

1.38.1 the date on which this Agreement expires due to the effluxion of time;

1.38.2 if the Service Provider is provisionally or finally wound up or placed in business rescue; or

1.38.3 terminates for any other reason as contemplated in this Agreement;

whichever is the earlier date;

1.39 **"User Departments"** means the Corporate Support and Shared Services and other departments as may be included in this Agreement by the parties in accordance with the Variation Procedure from time to time;

1.40 **"Variation Procedure"** means the procedure referred to in clause 7 of this Agreement and as recorded in schedule 3 (Variation Procedure) hereto;

1.41 **"CSSS"** means the Corporate Support & Shared Services.

2 SUSPENSIVE CONDITIONS

2.1 **Condition.** This Agreement is subject to fulfillment of the following suspensive condition:

2.1.1 that the Municipality provides the Service Provider with documentation evidencing that the Municipality has the required power and authority to conclude the Agreement.

2.2 **Parties to use best endeavours.** The parties will use their best endeavours and shall negotiate in good faith to procure the fulfillment of the suspensive condition as soon as reasonably possible after the Signature Date and shall at all times act in good faith to procure same.

2.3 **Consequences of failure.** Should the suspensive condition fail to be fulfilled as contemplated in this clause 2.2 within 90 (ninety days) of the Signature Date, or within such longer period as the parties may agree in writing, the provisions of this Agreement, save for those which by their nature and content seek to protect the ongoing interests of the parties, shall automatically lapse and be of no force or effect and no party shall have any claim against the other in terms hereof or arising therefrom.

2.4 **Fulfillment.** Upon fulfillment of the suspensive condition, the parties shall sign a certificate confirming that the suspensive condition have been fulfilled and that the Agreement is unconditional, provided that any failure so to sign shall only constitute *prima facie* evidence of the continued conditional nature of this Agreement.

3 APPOINTMENT

The Municipality hereby appoints the Service Provider, who accepts such appointment, to provide the Security Services in accordance with the terms and conditions of this Agreement.

4 DURATION

4.1 This Agreement shall commence on the Effective Date and, subject to rights

of termination stipulated herein, shall continue for a period of Thirty six (36) Months from the Service Commencement Date whereafter it shall automatically terminate, provided that the Municipality may extend the

Agreement on written notice to the Service Provider, which notice shall be given at least 90 (ninety) days prior to the expiry of the Termination Date, for a period of 6 (six) months, during which period the Municipality may terminate this Agreement on 30 (thirty) days' notice to the Service Provider.

4.2 The Parties agree that the Service Period forms an integral part of this Agreement and, accordingly, that in computing the duration of this Agreement, the Service Period shall be taken into account.

4.3 Unless otherwise agreed between the Parties, the Contract Period shall not be less than or exceed the period of 36 (thirty-six) months from the Commencement Date.

5 QUASI-CONTRACTUAL RELATIONSHIP

5.1 **Intention of the parties.** For the purposes of simplifying the relationship between the Service Provider and the Municipality User Departments, the parties have agreed that the contractual relationship will exist between the Service Provider and the Municipality. In this regard it is the parties' intention that:

5.1.1 the Municipality shall be responsible for procuring the fulfilment by the User Departments of all the obligations contemplated in this Agreement including, without limitation, the obligation to pay for the Services and recognise the exclusivity of the Service Provider as contemplated in this Service Level Agreement.

5.1.2 all disputes, litigation and the like will be conducted and resolved between the Service Provider and the Municipality; and

5.1.3 a User Department shall not be entitled to institute action against the Service Provider in its own name for any cause of action which arises pursuant to this Agreement and the Service Provider shall institute any such action against the Municipality only and not a User Department;

5.2 **Principal parties not deprived of claims, etc.** Likewise, it is not the parties' intention that:

5.2.1 the Municipality, to the extent that it seeks to institute or defend any claim on behalf of a User Department; or

5.2.2 the Service Provider;

be deprived of any indemnity, claim, counterclaim, right, action, remedy, exception, limitation of liability or defence due to the structure agreed and implemented above.

5.3 Quasi-contractual relationship. The relationship between the Service Provider and each User Department shall thus constitute a quasi-contractual relationship with the effect that, whilst no contractual nexus factually exists between the Service Provider and such User Department, the parties shall conduct themselves as if a contract on the terms and conditions of this Agreement exists between them and to the extent that any claim arises, same shall, to the extent required, be instituted, disputed and resolved between the Municipality and the Service Provider on the basis that each shall have all rights and duties in law and this Agreement as if they were the principal parties to the dispute.

5.4 Clarification. Without derogating from the generality of the foregoing, it is thus confirmed that to the extent that:

5.4.1 any User Department is guilty of any act or omission which would, were it a party to this Agreement, constitute a breach of this Agreement, such breach shall be deemed to be a breach of this Agreement by the Municipality;

5.4.2 the Service Provider is guilty of any act or omission in respect of a User Department, which would, were such User Department a party to this Agreement, constitute a breach of this Agreement, such breach shall be deemed to be a breach of its obligations to the Municipality in terms of this Agreement;

5.4.3 any User Department suffers any loss, harm or damage due to any act or omission of the Service Provider pursuant to this Agreement such loss, harm or damage shall be deemed to be that of the Municipality and the Municipality shall not be deprived a cause of action merely because the Municipality has not suffered such loss itself, provided that in such event:

5.4.3.1 the Municipality shall procure that the User Department fulfils all its obligations in terms of the common law in respect of such damages, including without limitation the User Department's obligation to mitigate its losses;

5.4.3.2 the Municipality shall be liable to the Service Provider to the extent that the Service Provider would have had any successful contractual or delictual claim (or counterclaim) against the User Department in respect of such action;

5.4.4 the Service Provider suffers any loss, harm or damage due to any act or omission of a User Department pursuant to this the Service Provider shall, vis-à-vis the Municipality:

5.4.4.1 fulfill all its obligations in terms of the common law in respect of such damages, including without limitation the obligation to mitigate its losses.

6 THE SERVICES

6.1 **Payment.** During the life of this Agreement, the Service Provider agrees and the Municipality undertakes, to make payment to the Service Provider in accordance with the provisions of schedule 1 (*Payment Mechanism*) and on the terms contained in this Agreement.

6.2 **Own cost and risk.** Subject to, and in accordance with, the provisions of this Agreement, the Service Provider shall exercise its rights and perform its obligations included in the Services at its own cost and risk without recourse to the Municipality save as otherwise expressly provided for in this Agreement.

6.3 **Provision of Services.** During the currency of this Agreement, the Service Provider shall at its own cost and risk be solely responsible for procuring that the Services are provided to the User Departments and the Municipality: -

6.3.1 in accordance with the Service Level Agreement;

6.3.2 in accordance with Good Industry Practice;

6.3.3 in accordance with the PSIRA Regulations and guidelines

6.3.4 in a manner that is not likely to cause death, injury to the health of any person or damage to property or the environment;

6.3.5 in a manner that is consistent with the Municipality discharging its statutory functions and duties; and

6.3.6 in compliance with all applicable law and the Consents;

6.4 **Co-operation.** Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

7 VARIATION PROCEDURE

7.1 **Amendments to this Agreement.** Should the parties at any stage wish to amend the provisions of this Agreement including the provisions of this clause, they shall do so by way of a written amendment signed by the authorised representatives of each party. Accordingly no variation, addition or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each party.

7.2 **Change in scope of services.** Should any party wish to propose any change to the scope or nature of Services, such party shall adhere to the Variation Procedure in Schedule 3.

8 SERVICE LEVELS

8.1 **Undertaking to achieve Service Levels.** The Service Provider undertakes that in providing the Services to the Municipality, it will achieve the Service Levels set out in the SLA.

8.2 **Penalties.** Without detracting from any rights or remedies which the parties may have, the parties agree to the payment of penalties in accordance with the provisions of this Agreement.

8.3 **Obligations upon failure to meet Service Levels.** Should the Service Provider at any time fail to meet the Service Levels due to its Default, the Service Provider will, without prejudice to the Municipality's other rights and remedies:-

8.3.1 pay the Municipality such penalty, if any, as may be stipulated in the SLA; and

8.3.2 provide all such additional resources as may be necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Municipality; provided that, for the purposes of clarity, it is recorded that the Service Provider shall not be liable for any failure to meet a Service Level to the extent that such failure

arises directly out of a failure of the Municipality to comply with its responsibilities set out in the SLA or this Agreement.

9 WITHHOLDING OF PERFORMANCE & SET-OFF

9.1 **No withholding of Services.** Subject to the provisions of clause 10.3, the Service Provider shall not withhold any Security Services from the Municipality or any User Department during the currency of this Agreement.

9.2 Neither Party may retain or set off any amount owed to it by the other Party under this Agreement which has, by agreement or determination under this Agreement, fallen due and payable, against any amount due to the party in question by the other under this Agreement, unless agreed to the contrary at that particular point in time.

9.3 **Exception.** Notwithstanding the provisions of clause 9.1 and without prejudice to any of its other rights in terms of this agreement or at law, should the Municipality, in the absence of any –

9.3.1 bona fide dispute between the parties in respect thereof;

9.3.2 material breach of this Agreement by the Service Provider which has been notified by the Municipality to the Service Provider.

fail to make payment on the due date of any amount due to the Service Provider under this Agreement, the Service Provider shall notify the Project Manager of such failure. If the Municipality fails to pay such outstanding amounts within 14 (fourteen) days of receipt by the Project Manager of such notice, the Service Provider shall be entitled to suspend the Security Services of, and/or withhold Services from, the User Department or client in question; provided that such Suspension of services or withdrawal shall be done before 6h00 on any day and furthermore the client received the prior notice.

10 REPORTS

10.1 **Provision of Information.** The Service Provider shall provide accurate information to the Municipality and the User Departments in order to enable them to manage thereof.

10.2 That service Provider submit the monthly report to the User Department / Project Manager duly appointed by the Municipality on or before the 07th of every Month, failing which shall let to the none payment of submitted invoices.

10.3 **Management Reports.** The Service Provider shall furnish the Municipality with the reports set out in the SLA on the terms and format stipulated therein.

11 SERVICE PROVIDER'S STAFF

11.1 **Suitably Qualified Staff.** The Service Provider shall employ suitably qualified and trained Staff to provide the Services to the Municipality in terms of this Agreement, provided that they shall be entitled, in their discretion, to allocate Staff resources in accordance with the skills and knowledge required, provided further that any exercise of such discretion shall not negatively impact upon the provision of the Services to the Municipality.

11.2 **The Service Provider Staff.** The Service Provider Staff providing the Services may be absent for short periods of time for reasons including annual leave and training. The Service Provider undertakes to avoid any disruption of the Services because of such circumstances.

11.3 **Replacement of Service Managers.** Either party may substitute Service Managers at its discretion or each will give reasonable notice to the other of such substitution and will provide replacement Staff of equivalent ability. Without derogating from the foregoing, should the Service Provider replace a Client Service Manager for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that a suitable period of handover and overlap, being not less than 30 (thirty) days, takes place between the new and the incumbent Client Project Manager. The costs of such handover shall be borne by the Service Provider.

11.4 **Access to premises.** The Municipality shall grant the Service Provider Staff reasonable access to all its premises for the purpose of providing the Security Services in terms of this Agreement.

11.5 **The Service Provider to adhere to security procedures of Municipality.** The Service Provider Staff shall at all times when on Municipality premises adhere to the standard health, safety and security procedures and guidelines applicable to Municipality Staff, as varied and conveyed by the Municipality to the Service Provider from time to time. It shall at all times be the responsibility of the Service Provider to notify its Staff of such changes and the Municipality shall not be liable for any failure by the Service Provider to do so. Should the Municipality at any time have reason to believe that any of the Service Provider's Staff is failing to comply with such standard health, safety and

security procedures and guidelines, the Municipality may deny such person access to any or all of the Municipality's premises or systems and require the Service Provider to replace such person immediately.

12 PROCESSES & PROCEDURES

In providing the Services in terms of this Agreement, the parties agree to adhere, inter alia, to the Service Procedures.

13 CONSIDERATION

13.1 **Fees and payment terms.** For the Services provided to the Municipality by the Service Provider in terms of this Agreement, the Municipality will pay the Service Provider the fees set out in the Agreement, on the terms and conditions set out in schedule 1 (*Payment Mechanism*) hereto.

13.2 The Municipality hereby agrees to remunerate the Service Provider strictly in accordance with the Tender proposal contained in page9-10 of the tender document price schedule/payment Milestone.

13.3 **Late Payments.** Each party shall be entitled, without prejudice to any other right or remedy, to receive Penalty Interest on any payment not duly made pursuant to the terms of this Agreement on the due date calculated from the day after the date on which payment was due up to and including the date of payment.

13.4 **Dispute.** If either party disputes all or any part of the fees or charges payable by the Municipality to the Service Provider pursuant to this Agreement the undisputed amount shall be paid by the Municipality in accordance with this clause 14.1, and the provisions of this clause shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within 10 (ten) Business Days of the dispute arising. If they fail so to resolve it, either party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. Following resolution of the dispute, the Service Provider shall issue credit notes in respect of the agreed or determined amount. The agreed or determined amount shall be paid by the Municipality to the Service Provider, together with interest on such amount at the Prime Interest Rate calculated from the day after the date on which payment was due up to and including the date of payment.

13.5 **Value added tax.** Any invoice or other request for payment of monies due to the Service Provider under this Agreement shall comply with the requirements of the Value Added Tax Act, 1991.

14 INSURANCE

14.1 The Service Provider shall be liable for any matter relating their company insurance during his service with the Municipality.

15 GOVERNANCE STRUCTURES

In order to facilitate the smooth and effective management of the relationship, the parties will implement and adhere to the contract governance structures set out in the Agreement, as amended from time to time.

16 CORRUPT ACTS

16.1 **Consequences of breach of warranty against Corrupt Acts.** If a party, any shareholder, any subcontractor or any affiliate of any of them or any of their Staff commits or is reasonably suspected (and such reasonable suspicion is supported by *prima facie* evidence confirming that reasonable suspicion on a balance of probabilities) by the other party of having committed any Corrupt Act, then:

16.1.1 if the Corrupt Act is committed by the Service Provider, any shareholder of the Service Provider or any member of their Staff acting under the authority of or with the knowledge of a director of the Service Provider or such shareholder, as the case may be, then in any such case, the Municipality may terminate this Agreement with immediate effect by giving written notice to the Service Provider;

16.1.2 if the Corrupt Act is committed by a Staff member of the Service Provider or of any shareholder acting of his or her own accord, then in any such case, the Municipality may give written notice to the Service Provider of termination and this Agreement will terminate, unless within 7 (seven) Business Days of the Service Provider's receipt of such notice that member of Staff's involvement in the provision of Services is terminated and (if necessary) the performance of any part of the Services previously performed by him or her is performed by another person;

16.1.3 if the Corrupt Act is committed by a subcontractor, director of a subcontractor or an employee of a subcontractor acting under the authority or with the knowledge of a director of that subcontractor, then in any such case, the Municipality may give written notice to the Service Provider of termination and this Agreement will terminate, unless within 14 (fourteen) Business Days of its receipt of such notice the Service Provider terminates the relevant subcontract and procures the performance of the relevant part of the Services by another person;

16.1.4 if the Corrupt Act is committed by an employee of a subcontractor acting of his or her own accord, then the Municipality may give notice to the Service Provider of termination and this Agreement will terminate, unless within 7 (seven) Business Days of its receipt of such notice the Service Provider procures the termination of that employee's involvement in the provision of Services and (if necessary) procures the performance of that part of the Services previously performed by that employee to be performed by another person;

16.1.5 if the Corrupt Act is committed by any other person not specified in clauses 16.1.1 to 16.1.4 above but involved in the provision of Services as a subcontractor or supplier to any subcontractor or to the Service Provider, then the Municipality may give notice to the Service Provider of termination and this Agreement will terminate unless within 7 (seven) Business Days the Service Provider procures the termination of such person's involvement in the provision of Services and (if necessary) procures the performance of the relevant part of the Services by another person; and

16.1.6 any notice of termination under this clause shall specify:

16.1.7 any direct losses sustained by the Municipality in consequence of any breach of this clause 19 by the Service Provider.

16.2 **Proper commissions permissible.** Nothing contained in this clause 16 shall prevent the Service Provider from paying any proper commission or bonus to its Staff within the agreed terms of their employment.

16.3 **Service Provider to notify of Corrupt Acts.** The Service Provider shall notify the Municipality of the occurrence (and details) of any Corrupt Act promptly on the Service Provider becoming aware of its occurrence

16.4 **The Service Provider to comply with all employment legislation, etc.** The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its Service Provider and its relationship with the Municipality. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force. The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the Municipality advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the Municipality informed regarding the steps taken and the implementation and the result thereof.

16.5 **No temporary employment service.** The Service Provider warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any Staff supplied by the Service Provider shall be an independent Service Provider as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. The Service Provider shall not have the authority to act on behalf of the Municipality or to bind the Municipality in any manner whatsoever without the Municipality's prior written consent and shall not be considered as having employee status for the purpose of any benefit applicable to the Municipality employees generally.

17 INDEMNITIES

17.1 **General indemnity.** The parties ("the Indemnifying Party") indemnify each other ("the Indemnified Party") and shall keep each other indemnified at all times against all losses sustained by either party in consequence of any:

17.1.1 loss of or damage to property;

17.1.2 breach of a statutory duty arising under applicable law;

17.1.3 claim for or in respect of the death or personal injury of any individual; or

17.1.4 any breach by the Indemnifying Party of any warranties given by it in this Agreement;

17.1.5 not to handle any forms of grievance from the Security Officers or staff against the Services Provider but the Service Provider must respect the letters of SA Law in all its action when dealing with its employees.

17.1.6 Not to handle any remuneration disputes between the Service Provider and its employees but Service Provider will be obliged to pay its employee accordingly in line with their employment contracts.

(including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance by the other Indemnifying Party of any Services, save to the extent caused by the negligence or willful misconduct of the Indemnified Party or by a breach by the Indemnified Party of an express provision of this Agreement.

17.2 **Section 198(4) indemnity.** The Service Provider indemnifies and shall keep the Municipality indemnified at all times against all losses sustained by the Municipality in consequence of any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against the Municipality by a Staff of the Service Provider. In the event that the Service Provider or any of its Service Provider's rendering of the Services to the Municipality, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Service Provider shall immediately inform the Municipality thereof and on request supply the Municipality with a copy of any award made pursuant to such proceedings or agreement and any documentation that the Municipality may request in respect thereof;

17.3 **Indemnity in respect of Competition issues.** The Service Provider hereby confirms that it has acquired professional opinion to the effect that no notification to the competition authorities is required if this Agreement is awarded to it. Accordingly the Service Provider hereby indemnifies and holds the Municipality and all relevant officials harmless against any fine, penalty or other payment which the Municipality or such officials may be required to pay

to the competition authorities whether as a result of the incorrectness of the opinion, or otherwise, including any and all legal costs incurred by the Municipality pursuant thereto.

17.4

Liability and indemnity. The Service Provider shall be liable for all loss, harm or damage which arises in respect of or due to any failure to provide the Security Services Agreement, provided that it is not caused by the Municipality or the Municipality's employees in any way. The Service Provider hereby indemnifies and holds the Municipality harmless against all:-

17.4.1

direct loss or damage which may be sustained by the Municipality or its Staff; and

17.4.2

loss, actions, costs, claims, demands, expenses, liabilities or any amounts whatsoever which may become payable by the Municipality to any other person as a result of a claim made against the Municipality or its Staff, arising out of the Service Provider's failure to perform its duties diligently

17.5

Process in the event of a claim. Should any claim be made against an indemnified Party by any person in terms of this clause 17:-

17.5.1

the indemnified Party shall give the indemnifying Party written notice thereof within 30 (thirty) days of becoming aware of such claim to enable the indemnifying Party to take steps to contest it;

17.5.2

the indemnifying Party may, within 7 (seven) days of receipt of the notice in terms of clause 17.5, elect, in writing, to contest an indemnified claim in the name of the indemnified Party and may control the proceedings in respect thereof (including any appeals), provided that the indemnifying Party indemnifies the indemnified Party and holds indemnified Party harmless (in a manner reasonably acceptable to the indemnified Party) against all and any costs (including without being limited to attorney and own client costs and any other costs not recoverable on taxation) which may be incurred by or awarded against the indemnified Party as a consequence of the defence of any indemnified claim;

17.5.3

the indemnifying Party shall pay the indemnified Party the amount of an indemnified claim within 7 (seven) days of receipt of the notification referred to in clause 17.5, unless the indemnifying

Party contests the indemnified claim in terms of clause 17.5.2, in which case the indemnifying Party shall pay to the indemnified Party the amount of the indemnified claim within 7 (seven) days after any final judgement or order is granted against the indemnified Party, provided that in those circumstances where a claim is contested and despite such contest, the claim is payable in law, the indemnifying Party shall pay to the indemnified Party the amount of the claim as soon as it is payable, provided further that should such amount be repaid to the indemnified Party, the indemnified Party shall refund such amount to the indemnifying Party within 7 (seven) days of receiving such amount;

17.5.4

the indemnified Party shall furnish the indemnifying Party with all reasonable assistance and shall co-operate in every reasonable way to facilitate the defence and/or settlement of any such claim, action, proceeding or suit provided that the indemnifying Party shall reimburse and pay to the indemnified Party all reasonable costs and expenses incurred by the indemnified Party in respect of such assistance and co-operation. Without derogating from the foregoing, the indemnified Party shall not: -

17.5.4.1 make any admissions of liability in respect of such claims;

17.5.4.2 Knowingly (which term shall include instances where the indemnified Party ought reasonably to have known) act or omit to act in a manner which may prejudice the indemnifying Party's rights.

18 LIMITATIONS ON LIABILITY

18.1 If the Service Provider is expressly entitled to any indemnification under this Agreement for any losses incurred by it whether because of the conduct of the Municipality or any other cause, then the Service Provider's sole remedy in respect of such losses shall be its indemnity and, accordingly, it shall not be entitled to any other remedy for such losses.

18.2 Under no circumstances shall either party be liable for any special, indirect, consequential or like damages which may arise pursuant to this Agreement including, without limitation, any damages arising due to any loss of profits or loss of business.

19 MUNICIPALITY WARRANTIES

The Municipality hereby warrants to the Service Provider that as at the Signature Date:-

19.1 it has the power to execute the Agreement and any other documents referred to in the Agreement to which it is a party and has taken all necessary actions to authorise such execution;

19.2 it has the power to perform its obligations under the Agreement and any other documents referred to in the Agreement to which it is a party and has taken all necessary actions to authorise such performance;

19.3 it has not knowingly omitted to disclose to the Service Provider any material relevant information in its possession or under its control; and

19.4 hereby indemnifies the Service Provider against all loss, liability, costs, damage and expense of every nature whatever, including, but not limited to, attorney costs on the scale as between attorney and own client, disbursements and other charges) incurred by the Service Provider directly or indirectly as a result of and/or attributable to –

19.4.1 any employee of the Municipality claiming that his or her employment contract should transfer from the Municipality to the Service Provider; or

19.4.2 the actual transfer of the employment contract of any employee of the Municipality, whether by order of court or operation of law or for any other reason, in accordance with the provisions of section 197 of the Labour Relations Act, Act 66 of 1995, as amended as a result of the conclusion or implementation of this Agreement.

20 CONSENTS

20.1 **Each party's responsibility.** Each party shall be responsible for:

20.1.1 obtaining all Consents which may be required by it in connection with its obligations under this Agreement;

20.1.2 maintaining in full force and effect all Consents required by it; and

20.1.3 Implementing all Consents required by it in accordance with their

respective terms within the period of their validity.

20.2 **Mutual assistance.** Each party shall provide all such assistance to the other as may be reasonably necessary for that other party to obtain all the Consents referred to in Clause 20.1.1 required by that party; provided, however, that the party providing assistance shall incur no liability for the costs of obtaining or maintaining, or any delay, failure or inability of the other party to obtain or maintain any such Consents.

21 OBLIGATIONS OF THE SERVICE PROVIDER.

21.1 The Service Provider shall render the Security services to the client diligently and to the standard required by the client. The completion report shall be furnished to the client on or before completion dates.

21.2 **The Service provider appoint** Emmanuel Rakhutsetsa Maremane in his capacity as the Director of Rakhutsetsa Security Services well as the Project Manager for this project and key point and liaison for all matters relating to the project by and between the Service Provider and client.

21.3 **Items required for the Services.** Save as provided otherwise, the Service Provider shall supply all items required for the provision of the Services at its sole cost and risk.

22 OBLIGATIONS OF THE MUNICIPALITY

22.1 The Client shall ensure that any party over which it has direct control performs its duties and functions referred to in this Agreement in a manner which enables the Service Provider to comply with its obligations to provide the Services.

22.2 The Client shall ensure that the Service Provider has reasonable access to and the support of whatever information or personnel, respectively, may be necessary for the Service Provider and client.

22.3 The client shall insure that the Service Provider have reasonable access to all the client's respective premises for the purpose of rendering this required Security services.

22.4 The client appoint Tebogo Manaka in her capacity as the Divisional Manager Legal and administration and the key point of contact and liaison for all the matters relating to the project by and between the service provider and client.

23 REVIEW OF THE AGREEMENT

It is fundamental to the success of this Agreement and the parties' ongoing relationship that this Agreement reflects and continues to reflect their prevailing business imperatives and capabilities. Consequently the parties agree that for the purposes of reviewing this Agreement, the Services, the size of the Use or accession of new properties or building, or any other matter arising out of this Agreement, they will, at a minimum, formally meet within 30 (thirty) days of the anniversary of the Effective Date (or at such other time as the parties may agree) each year during the currency of this Agreement provided that any and all changes agreed at such meetings shall be executed in accordance with the Variation Procedure.

24 INSPECTION

24.1 **The Service Provider to maintain full set of records.** The Service Provider shall ensure that a full and accurate set of records is kept of all Services performed in terms of this Agreement for a period of 5 (five) years after the provision of any such Services. In addition, the Service Provider shall, in order to enable the Municipality to determine whether the provisions of this Agreement are being complied with:

24.1.1 provide the Municipality with such information as it may reasonably require;

24.1.2 allow the Municipality to inspect and take copies of any documents of the Service Provider relating to the Services, including all data, information, procedures, event logs, transaction logs, audit trails, books, records, and correspondence;

24.1.3 Allow the Municipality or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given and the Service Provider's employees consenting thereto.

24.2 **Exclusions.** Notwithstanding the provisions of clause 24.1, the Municipality shall not be entitled to access the financial statements and balance sheet of the Service Provider, provided that should the Municipality require to inspect such excluded records, it may request the Service Provider's auditors, or the forensic services division of any auditing firm of international standing and repute, to scrutinise such records to determine the existence of any irregularity

suspected by the Municipality, provided that any party other than the Service Provider's auditors shall be obliged to maintain the confidentiality of the aforementioned excluded records.

24.3 **The Service Provider to provide reasonable assistance.** Where any information required for the inspection in terms of this clause 24 is kept by means of a computer, the Service Provider shall give the Municipality such reasonable assistance it requires to facilitate inspection and the taking of copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

24.4 **Information to be provided in specified form.** Any information required to be provided to the Municipality pursuant to this clause 24 shall be provided by the Service Provider, at the Municipality's cost, in such form (including a form otherwise than in writing) as the Municipality may reasonably specify.

24.5 **The Service Provider to allow access to premises.** Where, pursuant to any provision contained in this clause 24, the Service Provider is required to allow the Municipality to inspect or take copies of any item of any description the relevant party shall allow the Municipality, or its authorised representatives, such access to any premises of such parties as is necessary to enable the Municipality to inspect or take copies of the items.

25 CONFIDENTIAL INFORMATION

25.1 **Confidentiality obligation.** Each party ("the Receiving Party") must treat and hold as confidential all information which they may receive from the other party ("the Disclosing Party") or which becomes known to them concerning the Disclosing Party during the currency of this Agreement.

25.2 **Nature of the confidential information.** The confidential information of the Disclosing Party shall, without limitation, include:-
25.2.1 all software and associated material and documentation, including information contained therein;

25.2.2 all information relating to :-

25.2.2.1 the Disclosing Party's past, present and future research and development;

25.2.2.2 the Disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;

25.2.2.3 the terms and conditions of this Agreement;

25.2.2.4 the Municipality's Data.

25.3 **The Receiving Party's obligations with regard to confidential information.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information:-

25.3.1 it will only make the confidential information available to those of its Staff who are actively involved in the execution of this Agreement;

25.3.2 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Staff who need to be given access to confidential information, the confidential nature thereof;

25.3.3 subject to the right to make the confidential information available to their Staff under clause 25.3.1, they will not at any time, whether during this Agreement or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;

25.3.4 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Staff, will be, and will at all times remain, the sole and absolute property of such party and shall be promptly handed over to such party when no longer required for the purposes of this Agreement.

25.4 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Agreement, the Receiving Party will deliver to the Disclosing Party or, at the Disclosing Party's option, destroy all originals and copies of the Disclosing Party's confidential information in its possession. **Information which will not constitute confidential information.** The foregoing obligations shall not apply to any information which:-

25.5.1 is lawfully in the public domain at the time of disclosure;

25.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

- 25.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information;
- 25.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order; or
- 25.5.5 is disclosed by the Municipality to any Responsible Authority.
- 25.6 **Disclosure to professional advisors.** Nothing in this clause shall preclude the parties from disclosing the confidential information:-
- 25.6.1 to their professional advisors in the bona fide course of seeking business advice and professional advice; or
- 25.6.2 to the extent reasonably necessary to enforce their rights in terms of this Agreement.
- 25.7 **Disclosure to financier.** The provisions of this clause 29 shall not prohibit the disclosure by the Service Provider to the financial institution that is providing financing for the Company relevant of such general information as may reasonably be required by such financial institution for purposes of providing such funding. Provided that:-
- 25.7.1 such information shall be of a general nature and shall not include Abuse figures;
- 25.7.2 disclosure by the Service Provider in such circumstances shall however be subject to the Service Provider ensuring that any such information is used by the financial institution only for the above purposes and that the financial institution similarly keeps such information confidential.
- 25.8 **Indemnity in respect of confidential information.** The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage, which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or its Staff.
- 25.9 **Severability.** The provisions of this clause 29 are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force and effect for a period of 10 (ten) years after the date of termination.

26 INTELLECTUAL PROPERTY RIGHTS

26.1 Intellectual Property of the Municipality

26.1.1 All Intellectual Property Rights of the Municipality shall remain the

sole property of the Municipality and nothing in this Agreement shall grant the Service Provider any licence to use or exploit same.

26.1.2

The Municipality may, on prior written application by the Service Provider, grant a non-exclusive revocable right and licence to the Service Provider to use the Municipality's trademarks and logos for a period not to exceed the term of this Agreement.

26.1.3

In order to establish and maintain standards of quality and propriety acceptable to the Municipality, in the event that the Service Provider desires to use the Municipality's trademarks or logos in any way, the Service Provider shall first submit the concept or a sample of the proposed use to the Municipality for approval, which shall be in the Municipality's sole discretion. The Municipality shall use reasonable endeavours to advise the Service Provider of its approval or disapproval of the concept or sample within 15 (fifteen) Business Days of its receipt of the concept or sample. If the Municipality approves the concept or sample, the Service Provider shall not depart therefrom in any respect without the Municipality's further prior written approval.

26.1.4

If at any time the Municipality revokes its approval for the specified use of any trademark or logo, the Service Provider shall forthwith discontinue all use of such trademark or logo. The costs incurred by the Service Provider as a result of such revocation shall be borne by the Service Provider if the grounds for the revocation include any ground described in Clause 26.1.5.

26.1.5

The Municipality may revoke its approval upon 3 (three) Business Days written notice to the Service Provider if the Service Provider, any sub Service Provider or any of its or its sub Service Provider's Staff commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency and, in the Municipality's reasonable

opinion, materially prejudices the reputation and public goodwill of the Municipality.

26.1.6

The Service Provider acknowledges that the names of the Municipality (the "Protected Names") are associated with and peculiar to the Municipality and are the intellectual property of the Municipality. Consequently, the Service Provider agrees that the sole and exclusive ownership of the Protected Names shall vest in the Municipality.

26.1.7

In circumstances where the Service Provider utilises any of the Protected Names, either on its own or in combination or association with any other name, it shall do so only in terms of this Agreement and with the prior approval of the Municipality. On termination or expiry of this Agreement, the Service Provider shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.

26.2

Intellectual property of the Service Provider. All Intellectual Property Rights of the Service Provider shall remain the sole property of the Service Provider and nothing in this Agreement shall grant the Municipality any licence to use or exploit same, provided that:

26.2.1

The Service Provider shall, in respect of all Intellectual Property that is owned by it, on termination of this Agreement in accordance with its terms, grant to the Municipality a non-exclusive, royalty free licence to use the Service Provider's Intellectual Property for the Services, or any operational and maintenance services to be provided in the future by or for the Municipality in relation to the Services (the "Permitted Purposes") for a period of 6 (six) months after the termination date of this Agreement in order for the Municipality to make alternate arrangements in regard to the replacement of the Service Provider's Intellectual Property. Those licences shall not be capable of transfer by the Municipality to third parties without the prior written consent of the Service Provider.

26.2.2 In the event that any Intellectual Property is not owned by the Service Provider but was specifically developed for the Project, whether or not it is Licensed Intellectual Property, the Service Provider shall ensure that it is at all times entitled to-

26.2.2.1 grant to the Municipality a non-exclusive licence, on terms no less favourable than those applicable to the Service Provider, to use that Intellectual Property for the Permitted Purposes for a period of 6 (six) months after the termination date of this Agreement in order for the Municipality to make alternate arrangements in regard to the replacement of the relevant Intellectual Property. Those licences shall not be capable of transfer by the Municipality to third parties for the Permitted Purpose without the prior written consent of the Service Provider.

26.3 **No aspect of the Services to infringe 3rd Party Intellectual Property Rights.** The Service Provider warrants that no aspect of the provision of Services in terms of this Agreement will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("**Third Party Proprietary Rights**"), and the Service Provider shall, at its cost, defend the Municipality against any claim that the Services infringe any such Third Party Proprietary Rights, provided that the Municipality gives prompt notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider hereby indemnifies the Municipality against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Municipality in any action which is attributable to such claim and will reimburse the Municipality with all costs reasonably incurred by the Municipality in connection with any such action.

26.4 **Process in the event of a claim.** Should any claim be made against the Municipality by any person in terms of clause 26.2, the Municipality shall give the Service Provider written notice thereof within 10 (ten) days of becoming aware of such claim to enable the Service Provider to take steps to contest it. The provisions of clauses 17.5.2 to 17.5.4 shall apply mutatis mutandis in respect of any claims made in terms of this clause 26.

26.5 **Infringement of 3rd Party rights.** Should any third party succeed in its claim for the infringement of any Third Party Proprietary Rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe:-

26.5.1 obtain for the Municipality the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

26.5.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

26.5.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

26.5.4 withdraw the subject of infringement.

27 **DISPUTE RESOLUTION**

The parties accept that disputes may arise between them during the course of this Agreement. Any dispute which cannot be resolved between the respective service managers of the parties shall be referred to mediation within 5 (five) days of either party declaring such a dispute. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration.

28 **BREACH & REMEDIES**

If either party breaches this Agreement or fails to perform any of its obligations, then the other party shall provide written notice, calling upon the first party to rectify its breach within a period of not less than 10 (ten) business days.

Should the party in breach have failed to rectify the breach within the aforesaid time period, the other party may cancel this Agreement and claim recovery of damages.

28.1 **Delivery of confidential information, data and proprietary material.** The Service Provider shall deliver to the Municipality, within 14 (fourteen) days of the date of termination of the Agreement, all confidential information, data and other proprietary material of the Municipality in its possession.

29.1 Authorities and other rights granted to the Service Provider. All authorities and other rights granted by the Municipality to the Service Provider shall continue whilst the Service Provider continues to provide the Security Services in accordance with this agreement, whereafter such authorities and other rights shall automatically terminate upon termination of this agreement.

30 FORCE MAJEURE

Performance of the obligations of either party hereto in terms of this Agreement shall be excused for as long as and to the extent that it is unable to do so because of any cause beyond its control which was not reasonably foreseeable and for which it is not responsible which, if qualifying as such shall include, without limitation, an act of God or state, or war (whether declared or not) or sabotage, fire, flood, riot, downtime of any communication infrastructure, governmental restriction, affecting the performance of such obligations, provided that –

30.1 the party claiming such inability –

30.1.1 shall, when that party knows that it is likely to occur and when it occurs, immediately give notice to the other party (which shall be confirmed in writing as soon as possible thereafter) detailing the circumstances on which it relies and an estimate of the likely duration of such inability; and

30.1.2 shall, when that party knows that such inability is likely to terminate and when it terminates, immediately give notice thereof to the other party, which shall be confirmed in writing as soon thereafter as is possible;

30.2 the parties shall co-operate together and use all reasonable efforts to overcome, or failing which, to minimise the effect of such inability;

30.3 if the Service Provider is claiming such inability and the effect thereof has not been so overcome or minimised to the satisfaction of the Municipality –

30.3.1 within a period of 7 (seven) days, then the Municipality may, but shall not be obliged, to engage, one or more third parties to perform the obligations of the Service Provider hereunder affected by such inability which would otherwise have been performed in terms of this Agreement by the Service Provider, for only as long

as and to the extent that the Service Provider is unable to perform the same;

30.3.2 within a period of 30 (thirty) days, then either party hereto may (as its sole remedy therefor):-

30.3.2.1 to the extent that such inability relates to a particular User Department, cancel this Agreement in respect of the provision of Services to such User Department forthwith by written notice;

30.3.2.2 to the extent that such inability relates to the entire Agreement, cancel the entire Agreement forthwith by written notice;

30.3.2.3 provided that neither party shall be liable for any damages arising out of such termination;

30.4 neither party hereto shall be obliged to subsequently perform any obligation hereunder not performed as a consequence of and during any such inability, and the duration of this Agreement shall not be extended as a consequence of any such inability; and

30.5 the Municipality shall not be obliged to pay the Service Provider to the extent that the Service Provider does not provide the Services during the period of any such inability (whether arising in respect of the Municipality or the Service Provider).

31 NOTICES AND DOMICILIUM

31.1 **Addresses.** The parties select as their respective *domicilium citandi et executandi* the physical addresses set out on the cover sheet. Likewise the parties choose all the addresses set out on the cover sheet for the purposes of giving or sending any other notice provided for or required hereunder, or such other address or fax number as may be substituted by notice given as herein required.

31.2 **Change of Address.** Either party may by giving written notice to the other by hand, mail or by fax change its address details, provided that in respect of its physical address and fax number, the new address or number, as the case may be, shall be in the Republic of South Africa, and provided further that such change shall take effect fourteen (14) (fourteen) days after delivery of such written notice.

31.3 **Deemed Receipt.** Any notice to be given by either party to the other shall be deemed to have been duly received by the other party –

31.3.1 if delivered to the addressee's domicile by hand during Business Hours on a Business Day, on the date of delivery thereof, or
31.3.2 if sent by fax to the addressee on the first Business Day following the date of sending thereof;

32 NO PARTNERSHIP

Nothing in this Agreement shall be construed as creating a partnership between the parties and, save as expressly provided otherwise in terms of this Agreement, no party shall have any authority to incur any liability on behalf of any other or to pledge the credit of any other party.

33 ASSIGNMENT AND SUB-CONTRACTING

33.1 **Restriction on assignment or transfer of this Agreement.** No party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the aforementioned, the Service Provider shall be entitled to cede its rights and delegate its obligations under this Agreement in security to the financial institution providing funding, whether by way of a financial lease or otherwise to the Service Provider in respect of the Service Provider's obligations in terms of this Agreement as security for the Service Provider's obligations to that financial institution in respect of the funding.

33.2 **Right of the Service Provider to sub-contract.** The Service Provider may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-

33.2.1 such sub-contracting shall not absolve the Service Provider from

its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the Municipality harmless against any loss, harm or damage which the Municipality may suffer as a result of such sub-contracting and for which it would, but for the sub-contracting, be liable in terms of this Agreement;

33.2.2 such sub-contracting shall not have the effect of diluting or circumventing the provisions of this agreement.

33.2.3 the Service Provider shall at all times remain the sole point of contact for the Municipality in respect of the acquisition of Services by the Municipality.

34 INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

34.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

34.2 **References.** Unless otherwise stated, references to:-

34.2.1 Clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement. References in Schedules to clauses shall, unless expressly provided otherwise, be deemed to be a reference to clauses in such Schedule;

34.2.2 "this Agreement" shall include this Agreement as amended, varied, novated or substituted in writing from time to time;

34.2.3 any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;

34.2.4 a "person" shall include any "Responsible Authority" or any public or professional organisation and shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;

34.3 **Enactments.** References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.

34.4 **References to persons.** References to:-

34.4.1 persons shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust,

organisation, association or partnership, whether or not having

separate legal personality;

34.4.2 any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;

34.4.3 the singular shall include the plural and vice versa;

34.4.4 any one gender shall include a reference to all other genders.

34.5 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.

34.6 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.

34.7 **Definitions apply in Schedules.** Expressions defined in clause 1 shall bear the same meanings in the Schedules to this Agreement. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause.

34.8 **Approvals and consents.** Where the approval or consent of any party is required in terms of this Agreement, the parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the party who is required to give same.

34.9 **Neutral construction.** The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

34.10 **The term "including".** The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of general words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive

meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.

34.11 **Common meaning.** Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry specific practice, will be interpreted in accordance with their generally accepted meanings.

34.12 **Use of email.** The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

35 GENERAL

35.1 **Whole Agreement.** This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and no party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

35.2 **Waiver.** No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

35.3 **Severability.** Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

35.4 **Non-solicitation.** The Service Provider shall not during the currency of this Agreement offer any employment, consultancy or other contract to a person:

- 35.4.1 who is an official of the Municipality, any User Department or any other municipal entity under the sole or shared control of the Municipality; or

LC 15

35.4.2 who was such an official at any time during a period of one year before the offer is made.

35.5 **Applicable Law.** This Agreement will be governed by and construed in accordance with the law of the RSA and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

35.6 **Jurisdiction.** Subject to clause 27, the parties hereto hereby consent and submit to the jurisdiction of the Limpopo High Court of South Africa in any dispute arising from or in connection with this Agreement.

35.7 **Survival.** Notwithstanding termination of this Agreement, any clause which, from the context, contemplates on-going rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

35.8 **Good Faith.** The parties shall at all times during the currency of this Agreement owe each other a duty of good faith.

PAYMENT MECHANISM

SCHEDULE 1

5/15

PR

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1. DEFINITIONS

1.1. In this Schedule, unless inconsistent with or otherwise indicated by the context –

1.1.1. "**Costs**" has the meaning set out in clause 4 (*Additional Costs*) of this Schedule;

1.1.2. "**Municipality**" has the meaning ascribed to it in the Agreement;

1.1.3. "**CPI**" has the meaning ascribed to it in the Agreement;

1.1.4. "**Effective Date**" has the meaning ascribed to it in the Agreement;

1.1.5. "**Monthly Invoice**" means the invoice to be issued by the Service

Provider in accordance with this document;

1.1.6. "**Payment Mechanism Schedule**" means this Schedule to the

Agreement;

1.1.7. "**Service Provider**" has the meaning ascribed to it in the Agreement;

1.1.8. "**Service Levels**" has the meaning ascribed thereto in the Agreement;

1.1.9. "**Service Month**" means each calendar month occurring during the

term of the Agreement, provided that the first Service Month for the

Contract Period shall be reckoned from the Service Period until the

last day of the calendar month in which that Service Period occurs and

the last Service Month shall be reckoned from the first day of a Service

Month until the Expiry Date or Termination Date (as the case may be);

1.1.10. "**Service Period**" has the meaning ascribed to it in the Agreement;

1.1.11. "**Signature Date**" has the meaning ascribed to it in the Agreement

1.1.12. "**Remuneration**" has the meaning set out in Clause **Error! Reference**

source not found. of this Schedule.

2. INTERPRETATION

- 2.1. Defined terms in the Agreement and any other Schedule used in this Schedule, but not defined above in Clause 1 shall, unless inconsistent with or otherwise indicated by the context, bear the same meaning as that contained in the Agreement or such other Schedule, as the case may be.
- 2.2. The rules of interpretation contained in clauses of the Agreement shall similarly apply to any terms contained in this Schedule

3. REMUNERATION

- 3.1.1. The client hereby agrees to pay the service Provider strictly in accordance with the letter of appointment and schedule of price.
- 3.1.2. Payment of the contract will be on monthly basis on completion of specific deliverables of the programme activities.
- 3.1.3. The Client shall upon the Service Provider submission of valid tax invoice and approval by the client in particular the Manager CSSS that deliverables contained therein have been achieved, pay the invoice amount to the Service Provider within thirty (30) days of receipt of invoice.
- 3.1.4. If the client defaulted or falls into arrear with any payment then the Service Provider reserves its right to claim payment of interest at the prime rate, calculated from the 30(thirty) days after the payment has become due to the actual date of payment. Unless the client is awaiting clarification of issues on the invoice, in which case the payment may exceed (30) thirty days.

PRICING SCHEDULE AND PAYMENT MILESTONE

Description of Sites/Premises.	Year:1 Monthly	Year 1 Annual Total	Year 2 Annual Total	Year 3 Annual Total	Total Year 1+2+3
2x Guard (Armed)	R25 200.00	R302 400.00	R320 544.00	R339 776.64	R962 720.64
2x Guard (Unarmed)	R23 181.82	R278 181.84	R294 872.75	R312 565.06	R885619.65
(Grade C Area3					
1x Guard (Armed)	R12 600.00	R151 200.00	R160 272.00	R169 888.32	R481 360.32
1xGuard (Unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.83
(Grade C,Area3)					
2x Guard (Armed)	R25 200.00	R302 400.00	R320 544.00	R339 776.64	R962 720.64
2x Guard(unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.83
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Grade C,Area3					
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1x Guard (Unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.83
Grade C,Area3					
2x Guard (Armed)	R25 200.00	R302 400.00	R320 544.00	R339 776.64	R962 720.64
2x Guard (Unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.

4. ADDITIONAL COSTS

- 4.1. Additional Costs are costs falling within the categories of costs listed below which are incurred by the Service Provider in the provision of or relating to the Service
- 4.1.1. Where the Service Provider is required to make additional Security Officer in case of Special Occasion.
- 4.1.2. Make Good Costs; and
- 4.1.3 Where the Services provider has to add the Security Services devices and fire arms at the request of the client in a special occasion.

These rates will be changed every year as per the PSIRA rates.

DAY SHIFT					
1x Guard (Unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.83
Grade C(Area 3)					
NIGHT SHIFT					
1x Guard(Armed)	R12 600.00	R151 200.00	R160 272.00	R169 888.32	R481 360.32
1x Guard (Unarmed)	R11 590.91	R139 090.92	R147 436.38	R156 282.53	R442 809.83
Grade C(Area 3)					
Sets of Uniform	R15 000.00	R180 000.00	R190 800.00	R202 248.00	R573 048.00
Share of Overheads	R25 000.00	R300 000.00	R317 999.96	R337 079.92	R955 079.88
Sub-Total	R356 500.01	R4 278 000.12	R4 534 680.13	R4 806 760.55	R13 619 440.80
Amount (Exclusive of VAT)					
VAT at 15%	R53 475.00	R641 700.02	R680 202.02	R721 014.08	R2 042 916.12
Total Amount (Inclusive of VAT)	R409 975.01	R4 919 700.14	R5 214 882.15	R5 527 774.63	R15 662 356.92

- 4.2. It is agreed that Municipality shall reimburse to the Service Provider within 30 days from date of invoice the actual costs incurred by the Service Provider relating to the Additional Costs together with the Service Provider's mark-up on the basis that the Service Provider shall only be entitled to claim the Additional Costs if such costs are approved by the Municipality prior to such costs being incurred. In the event that the Municipality consent is not obtained prior to such costs being incurred, the Service Provider shall have no further claim against Municipality in respect of such Additional Costs.

5. MONTHLY INVOICING

- 5.1. The Service Provider shall invoice the Municipality for services in accordance with the relevant pricing principles set out in this agreement.
- 5.2. The Service Provider shall submit Monthly invoices electronically for all amounts due per fleet category by no later than the first working day of each subsequent month.
- 5.3. The Municipality shall settle amounts due to the Service Provider in terms of invoices issued, by Electronic Funds Transfer in accordance with the approved municipal accounting practices within 20 (twenty) working days on receipt of invoices should there be no query.
- 5.4. All payments to be made to the Service Provider shall be made to the following bank account : **BANK NAME: NEDBANK LIMITED**

ACCOUNT HOLDER: RAKHUTSETSA SECURITY

SERVICES CC

ACCOUNT NUMBER: 031 264 689

BRANCH NO: 198765

ACCOUNT TYPE: CURRENT ACCOUNTS

- 5.5. The Service Provider shall be entitled from time to time and at any time to change the above account to another bank account, on written notice to the Municipality.

6. DISPUTED INVOICED AMOUNTS, CREDIT NOTES AND CHARGES

- 6.1. The Municipality shall query any invoice in writing within 20 days of receiving the invoice and shall settle amounts due to the Service Provider in terms of invoices issued less the value of the disputed charges.

6.2. The Service Provider shall provide credit notes in an electronic format in respect of all disputed charges paid by the Municipality and subsequently settled against the Service Provider.

6.3. The Service Provider shall provide supporting documents for every credit note to assist the Municipality to verify the credits for accuracy and validity.

6.4. The Service Provider shall respond to queries lodged by the Municipality regarding invoices, credit notes, disputed charges, and/or overcharges within 30 days of such queries being lodged.

6.5. Disputes with respect to invoices that cannot be resolved between the parties shall be determined in accordance with Annexure 3 (dispute resolution procedure) of the Agreement.

6.6. The Municipality shall not withhold payment of the undisputed portion of any invoice.

6.7. The Service Provider shall, in respect of any disputed charges settled or determined in favour of the Municipality, issue a credit note for the relevant amount within 7 days of settlement date.

6.8. The Municipality shall settle amounts due within 7 days, where a disputed charge is settled in favour of the Service Provider.

6.9. The Service Provider shall pay all refunds or penalties directly into the Municipality's bank accounts nominated in writing for this purpose.

6.10. The Municipality shall neither consider nor pay any amount/cost for services provided by the Service Provider, in instances where the service/cost or any portion thereof is invoiced more than 60 days after the service was provided.

7. LATE PAYMENTS

Each Party shall be entitled, without prejudice to any other right or remedy, to receive Penalty Interest on any payment not duly made pursuant to the terms of this Payment Mechanism Schedule and/or the Agreement on the due date calculated from the day on which payment was due up to and excluding the date of payment.

8. VAT

All amounts payable in terms of this Payment Mechanism Schedule and the Agreement shall be inclusive of value added tax at the prescribed rate unless expressly stated otherwise herein or in any Monthly Invoices submitted by the Service Provider to the Municipality.

9. RECONCILIATION OF DEDUCTIONS, PASS THROUGH COSTS AND ADDITIONAL COSTS AFTER THE CONTRACT PERIOD

- 9.1. Within 5 (five) Business Days following the expiry of the Contract Period or the Termination Date, whichever occurs earlier, the Service Provider shall deliver to the Municipality a reconciliation statement setting out in detail:
- 9.1.1. Total cost incurred by the Service Provider during the term of this Agreement.
- 9.2. In the Service Provider must submit the close-up report at the end of the term of this agreement and final invoice for the work done within five (5) days following the expiry of the contract or terminated date, whichever occurs earlier.
- 9.3. The final invoice shall be paid upon receipt of the final- close up report Referred to in clause 9.2.

10. INDEXATION

- 10.1. Unless otherwise stated, all escalations due in respect of any amount or the Unitary Payment shall be applied in accordance with the CIP or PSIRA Rates, whichever occurs earlier.
- 10.2. The Service Provider shall inform the Municipality, in writing, at least 10 days after the announcement of the annual CPI figure (e.g. April to March) about the new/anticipated monthly rate that will be applicable for each Security Officer/ guard and other disbursements after the anniversary of the agreement.

11. BENCHMARKING

The Municipality shall be entitled to benchmark the Service Provider's charges as contemplated in the relevant provisions of the agreement.

SCHEDULE 2

OUTPUT SPECIFICATIONS

5.13d
PR

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R-2-1.5

To insure Security presence, regulate access in an out of the Municipality buildings or facilities, prevention of resources leakages and maintain law and order within the allocated sites.
To render the private security and protect the assets of the client as per PSIRA Regulations and Guidelines through the following:

- Protection of the municipality staff and visitors within the WDM Premises including money, cheques, negotiable documents and other valuables.
- Access control duties of all entrances, including the checking and reporting of the movements of the persons entering and leaving the building.
- One of the two guards responsible for access control must use the metal detector device for the purpose of searching person entering municipal building
- Security reporting and monitoring.
- Incident recording and reporting
- Monitoring of car parking

SCOPE OF WORK

NO	Workstation/Location	Number of Guards
1	WDM Head offices	Day Shift: At the Municipal Reception/ Head Office 7 days a week, 2 X Unarmed officers 2 Armed Officer Night Shift: Mondays to Sundays (7am to 7pm) Dayshift 1 X Unarmed Officers 1 X Armed Officer At the Municipal Parking and Surrounding Area, 7 days a week Mondays to Sundays (7pm to 7am) Night shift
2.	Modimolle Disaster Centre	Day Shift: 2 X Unarmed officer 1 X Armed Officer At Modimolle Disaster Centre 7 days a week, Mondays to Sundays (7am to 7pm) Dayshift Night Shift: 1 X Unarmed Officer

Agreement: Schedule 2 – Output Specification

		At the Modimolle Disaster Centre, 7 days a week Mondays to Sundays (7pm to 7am) Nightshift 1 X Armed Officer
3	Lephalale Disaster Centre	Day Shift: 2 X Unarmed Officer 1 X Armed Officer At Lephalale Disaster Centre 7 days a week, Mondays to Sundays (7am to 7pm) Dayshift Night Shift: 1 X Unarmed Officer 1 X Armed Officer At the Lephalale Disaster Centre, 7 days a week Mondays to Sundays (7pm to 7am) Night shift
4	Modimolle Abattoir	Day Shift: 2 X Unarmed Officer 1 x Armed Officer At Modimolle Abattoir 7 days a week, Mondays to Sundays (7am to 7pm) Dayshift Night Shift: 1X Unarmed Officer 1 X Armed Officer At the Modimolle Abattoir Centre, 7 days a week Mondays to Sundays (7pm to 7am) Night shift.
5.	Bela-bela Fire Station.	Day Shift: 1X Unarmed Officer 1X Armed Officer Night Shift: 2X Unarmed Officer 1X Armed Officer At the Bela-Bela Fire Station, 7 days a week Monday to Sunday (7PM to 7 am) Night shift.
Total number of Security Officers on site 26 (Twenty Six)		

25/5

- The Security Officers allocated to render the service must be registered as security Officer in terms of Private Security Industry Regulatory Authority (PSIRA).
- Bidder must have Supervisors immediately available on 24 hours basis to react in the event of emergencies at least two (2).
- Security Officers allocated to render services must train to the standards set by the Private Security Industry Regulatory Authority, by a training center accredited by the Security Regulatory Authority (PSIRA).
- All Security Officer who will be armed must be fit and certified to carry fire arm and with fire arm license.
- The Service Provider undertakes to ensure that each Security Officer on site will at all times when on duty be fully equipped in respect of batons, pens, radio, pocket books, bullet proofs on high risk areas.
- The Security Officers are neat and clearly identifiable uniform of the company, which will include raincoats and overcoats.
- At the bidder Headquarter/satellite, the Service Provider must keep relevant files as well as all appropriate documents of all Security Officer, who are employed for rendering the services to the Municipality, at when a needs arise the Municipality may request to inspect relevant documents.
- All lost articles must be handed at the Control Room on the site and record in the occurrence book. Thereafter it must be handed to the client's Project Manager (DM Legal and Administration).
- Under no circumstance will any Security Officer be allowed to trade on the Municipality premises or allocated sites.
- The Security Officer shall be authorized to search vehicles/Municipality Officials or visitors in terms of the Control of Access to Public Premises and Vehicle Act (Act 53 of 19).
- The Security Officer on site must not accept, receive any deliveries for any municipal Official for this purpose the municipality official must accept or receive the deliveries.
- The Municipality exonerates itself from any form of grievance from the Security Officer or staff of the Service Provider but the Municipality will expect the Service Provider to respect the letters of the law in all its action and in action when dealing with their staff members (e.g matters of salaries and others).

TYPE OF SERVICE

The following listed roles and responsibilities are to be performed and adhered to by the Service Provider

- Protection of municipal, staff assets including money, cheque, negotiable documents and other valuables.
- Access control duties of all entrances, including the checking and reporting of the movements of persons entering and leaving the building.
- One of the two guards responsible for access control must use the metal detector device for the purpose of searching person entering municipal building.
- Security reporting and monitoring.
- Incident recording and reporting.
- Security reporting and monitoring.
- Monitoring of Car Parking

1.5

SCHEDULE 3
VARIATION PROCEDURE

5.1 37
[Signature]

- 1 **Changes to Services.** During the currency of this Agreement, events may occur which require a change to the Services or Service Levels. No such change shall be implemented unless the Parties comply with the provisions of this Schedule. Changes to the Agreement shall not be subject to the Variation Procedure, but shall be undertaken on the basis set out in this service level agreement.
- 2 **Party desiring change.** Subject to the Authority Levels delegated to the responsible official(s), should the Municipality wish to propose any change to the provisions of this Agreement or should a User Department wish to amend any provision of the Output Specification, such party shall address a written proposal to the Service Provider detailing the desired changes or amendments ("Change Request").
- 3 **Change Request.** Such Change Request shall specify the reasons for the change and describe the change in sufficient detail to enable the Service Provider to formulate a response. The Service Provider shall investigate the likely impact of any proposed changes upon the Services and Service Levels;
- 4 **Change Note.** The Service Provider shall, within 14 (fourteen) days of receiving a Change Request, issue a Change Note detailing the services required to implement the change, the effects of the change and the effect that the changes, if implemented, will have on the Service Levels and on the costs of the services.
- 5 **No change effective until sign-off.** Neither the Service Provider nor the Municipality nor any User Department shall be entitled to proceed or require the implementation of any change to the Services or Service Levels pursuant to this Schedule until such change and all matters relating to such change have been agreed to in writing between the Parties, and off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither party shall be obliged to agree to any change proposed by the other party but the Parties will not unreasonably delay or withhold their agreement to a proposed change.
- 6 **Sign-off.** The parties shall discuss the proposed changes and shall effect such changes to the Service Provider's Change Note as agreed. The Change Note in respect of the change shall then be considered by the Municipality or User Department concerned and approved or rejected in its discretion, provided that if a final proposal:-
- 6.1 is accepted by the Municipality, it shall be signed off by duly authorised representatives of the parties and incorporated into this Agreement;
- 6.2 is rejected by the Municipality, the Services shall continue to be provided on the existing basis.

7 **Exceptions.** Notwithstanding the above, the Parties acknowledge and agree that:

7.1 the provision of the Services in terms hereof will necessarily involve a number of minor on-going operational adjustments or changes ("Operational Changes"), as agreed to in writing between the Parties, and that the provision of Services would be unnecessarily delayed or frustrated if such operational changes are subject to the Variation Procedure. Accordingly, agreed operational changes will not be subject to the Variation Procedure, it being agreed that the Service Provider Project Manager and Municipality Project Manager will manage and implement operational changes by way of agreed form between the Parties. Either Party may, notwithstanding the provisions of this clause 7, require that operational changes be subject to the Variation Procedure detailed in this Schedule; and

7.2 any written variation of this Agreement signed by authorised representatives of the parties shall be valid and binding as between the parties notwithstanding the fact that the Variation Procedure has not been followed.

8 **The Service Provider Change Request.** Should the Service Provider wish to propose any change, it shall issue a Change Note detailing the services required to implement the change, the effects of the change and the effect that the changes, if implemented, will have on the Service Levels and on the costs of the Services. Thereafter the parties shall follow the procedure set out in paragraphs 5 to 7 of this Schedule, inclusive, *mutatis mutandis*.

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